

1                                   **IN THE UNITED STATES DISTRICT COURT**  
2                                   **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
3                                   **SAN FRANCISCO DIVISION**

4 RE:LAUNCH, LLC,  
5                                   Plaintiff,

6                                   vs.

7 PC TREASURES, INC. and KAREN SWEET,  
8                                   Defendants.

Case No. C-05-0697-PJH

9  
10 KAREN SWEET,  
11                                   Counter-Plaintiff,

12                                   vs.

13 RE:LAUNCH, LLC,  
14                                   Counter-Defendant.

15  
16                                   **PROTECTIVE ORDER**

17           The parties having stipulated to the entry of this Order pursuant to the Court's  
18 authority under Rule 26(c) of the Federal Rules of Civil Procedure, the following Order  
19 shall, subject to further Order of this Court, govern the disclosure and use of information  
20 produced during discovery in this case that the producing party or non-party designates as  
21 "confidential" or "confidential-attorney access only":  
22

23           1.     No party, by stipulating to the entry of the Order, shall be deemed to have  
24 admitted or agreed that information designated by another party or non-party to be  
25 confidential is, in fact, confidential. Information that is not confidential shall not be made  
26 confidential merely by entry of this Order, notwithstanding that the producing party or  
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1 non-party has designated such information to be confidential. The propriety of the  
2 designation of information as confidential by the producing party or non-party may be  
3 challenged by motion filed with this Court. Notwithstanding such motion, the moving party  
4 shall comply with this Order with respect to such confidential information until this Court  
5 decides that the designated information is not subject to the requirements of this Order.

6       2. Discovery material produced in this action by any party or non-party which  
7 contains or discloses information alleged to be of a non-public nature, including, but not  
8 limited to, documents or information alleged to be commercially sensitive or proprietary,  
9 may be designated by the producing party or non-party as "confidential" ("Confidential  
10 Discovery Material"). In agreeing that parties and non-parties may designate discovery  
11 material as Confidential Discovery Material, in the first instance, the parties do not endorse  
12 the propriety of any such designation and reserve all rights to challenge any such  
13 designation in accordance with paragraph 12 of this Protective Order by appropriate  
14 application to this Court. All Confidential Discovery Material produced by any party or non-  
15 party shall bear the legend "CONFIDENTIAL," in addition to an appropriate Bates-stamp  
16 designation.  
17 designation.

18       3. Further, Confidential Discovery Material produced in this action by any party  
19 or non-party may be designated by the producing party or non-party as "Attorney Access  
20 Only", when the disclosure of the Confidential Discovery Material to a party could  
21 compromise, impair or destroy the commercial value of such information or the privacy  
22 rights that attach to it ("Attorney Access Only Material"). In agreeing that parties and non-  
23 parties may designate discovery material as Attorney Access Only, the parties do not  
24 endorse the propriety of any such designation and reserve all rights to challenge any such  
25 designation.  
26 designation.  
27 designation.

1 designation in accordance with paragraph 12 of the Protective Order by appropriate  
2 application to this Court. All Attorney Access Only Material produced by any party or non-  
3 party shall bear the legend, "CONFIDENTIAL—ATTORNEY ACCESS ONLY,"  
4 "CONFIDENTIAL—ATTORNEY'S EYES ONLY", or a legend of like import, in addition to  
5 an appropriate Bates-stamp designation. All of the terms and conditions of this Protective  
6 Order relative to Confidential Discovery Material shall apply with equal force to Attorney  
7 Access Only Material, except that Attorney Access Only Material shall not be disclosed to  
8 the non-producing party or any non-party without further Order of this Court upon  
9 appropriate motion and shall be disclosed only to counsel for the parties in this action who  
10 are actively engaged in the conduct of this litigation; to the partners, associates,  
11 secretaries, paralegal assistants and employees (including expert consultants, subject to  
12 the requirements of paragraph 5(c)) of such counsel to the extent reasonably necessary to  
13 render professional services in this litigation; to persons with prior knowledge of the  
14 documents or the confidential information contained therein, and their agents; and to court  
15 officials involved in this litigation (including court reporters, persons operating video  
16 recording equipment at depositions, and any special master appointed by the Court).

19 4. All Confidential Discovery Material and Attorney Access Only Material  
20 produced by any party or non-party shall be used only for the prosecution or defense of  
21 this action, and not for any other proceeding, litigation or any business, commercial, or  
22 other purpose.

24 5. As to all confidential discovery material provided or produced by any party or  
25 non-party, its employees or former employees, under no circumstances, other than those  
26 specifically provided for in this or subsequent orders of this Court, shall Confidential  
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1 Discovery Material be disclosed to persons other than the following: (1) the parties and  
2 their respective employees; (2) counsel for the parties in this action; (3) the partners,  
3 associates, secretaries, paralegal assistants and employees of such counsel to the extent  
4 reasonably necessary to render professional services in this litigation; (4) persons with prior  
5 knowledge of the documents or the confidential information contained therein, and their  
6 agents; and (5) officials or staff of this Court involved in this proceeding (including court  
7 reporters and persons operating video recording equipment at depositions). Subject to the  
8 provisions of subparagraph (c), Confidential Discovery Material may also be disclosed—  
9

10 (a) to any person designated by this Court in the interests of justice, upon  
11 such terms as this Court may deem proper;

12 (b) to persons noticed for depositions, but only in the course of such  
13 deponent's deposition pursuant to paragraph 6 below; and

14 (c) to outside consultants or experts retained for the purpose of assisting  
15 counsel in this action; to employees of parties involved solely in one  
16 or more aspects of organizing, filing, coding, converting, storing, or  
17 retrieving data or designing programs for handling data connected  
18 with these actions, including the performance of such duties in  
19 relation to a computerized litigation support system; and to employees  
20 of third-party contractors performing one or more of these functions;  
21 provided, however, that in all such cases the individual to whom  
22 disclosure is to be made has signed the attached form  
23 Acknowledgment of Protective Order and Agreement to be Bound.  
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1           6. Confidential Discovery Material produced by a party hereto may be used  
2 during depositions subject to the following:

3           (a) A deponent may during the deposition be shown and examined about  
4 Confidential Discovery Material; however, if, within five (5) days  
5 following service of notice of the deposition, the producing party  
6 identifies the deponent as a competitor (or an employee of a  
7 competitor) of the party that so designated the document, then  
8 paragraph 6(b) must be complied with. If the time given for notice of  
9 the deposition is less than twenty (20) days, the deposition shall be  
10 continued in order to permit a motion objecting to the proposed  
11 disclosure to be filed. Deponents, other than those retained and  
12 disclosed as experts, shall not retain or copy portions of the transcript  
13 of their depositions that contain Confidential Discovery Material not  
14 provided by them or the entities they represent or retain or copy any  
15 exhibits that contain Confidential Discovery Material. A deponent who  
16 is not a party or representative of a party shall be furnished a copy of  
17 this order before being examined about designated confidential  
18 information.  
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21           (b) Before disclosing Confidential Discovery Material to any deponent  
22 identified in writing by the producing party as a competitor (or an  
23 employee of a competitor) of the party that so designated the  
24 document, the party wishing to make such disclosure shall give at  
25 least 10 days' advance notice in writing to the counsel who  
26  
27

1 designated such information as confidential, stating the names and  
2 addresses of the person(s) to whom the disclosure will be made and  
3 identifying with particularity the documents to be disclosed. If, within  
4 the 10-day period, a motion is filed objecting to the proposed  
5 disclosure, disclosure is not permissible until this Court has denied  
6 such motion. This Court will deny the motion unless the objecting  
7 party shows good cause why the proposed disclosure should not be  
8 permitted.  
9

10 (c) Parties (and deponents) may, within 30 days after receiving a  
11 deposition transcript, designate pages of the transcript (and exhibits  
12 thereto) as confidential. Confidential Discovery Material within the  
13 deposition transcript may be designated by designating in writing the  
14 page and line numbers that are confidential. Until expiration of the  
15 30-day period, the entire deposition will be treated as subject to  
16 protection against disclosure under this order. If no party or deponent  
17 timely designates Confidential Discovery Material in a deposition, then  
18 none of the transcript or its exhibits will be treated as confidential; if a  
19 timely designation is made and any of that information is to be filed  
20 with the Court, the confidential portions and exhibits shall be filed  
21 under seal separate from the portions and exhibits not so marked.  
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24 7. Confidential Discovery Material produced by a non-party may not be used  
25 during depositions unless (a) the deponent is a party or an employee of one of the parties,  
26 (b) the deponent is the non-party (or an employee thereof) who produced the confidential  
27

1 material, or (c) the producing non-party has been given notice of the deposition and the  
2 intended use of the non-party confidential material, and has either consented in writing to  
3 its use or been given opportunity to object to its use by means set forth in Paragraph 6  
4 above. If a producing non-party objects to use of its confidential material at a deposition,  
5 the non-party's confidential material shall not be used at the deposition of the deponent  
6 unless and until authorized by the Court.

7  
8 8. Subject to the Federal Rules of Evidence, Confidential Discovery Material  
9 may be offered in evidence at trial or any evidentiary hearing, provided that the proponent  
10 of the evidence gives five days' advance notice to counsel for any party or other person  
11 that designated the documents as confidential. Any party may move this Court for an order  
12 that the evidence be received *in camera* or under other conditions to prevent unnecessary  
13 disclosure. This Court will then determine whether the proffered evidence should continue  
14 to be treated as confidential and, if so, what protection, if any, may be afforded to such  
15 information at the trial. This paragraph does not prohibit any party from moving this Court  
16 for an order regarding the treatment of any other confidential information as that party may  
17 deem appropriate.

18  
19 9. In the event that counsel for any party determines to file in or submit to this  
20 Court any Confidential Discovery Material or information derived therefrom, or any papers  
21 quoting or containing such material or information, then, in compliance with Civil Local Rule  
22 79-5, that party shall first file a written request for a sealing order setting forth the good  
23 cause for such an order, accompanied by a proposed order that is narrowly tailored to  
24 cover only the document, the particular portion of the document, or category of documents  
25 for which good cause exists for filing under seal. No document shall be filed under seal  
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1 without a court order that authorizes the sealing of the particular document, or portions  
2 thereof.

3       However, if the sole ground for the sealing order is that the opposing party (or a  
4 non-party) has designated the document as confidential, the opposing party (or non-party)  
5 shall file a declaration establishing good cause for the sealing along with a proposed order,  
6 or shall withdraw the designation. The declaration shall be filed within five days of service  
7 on the opposing party (or non-party) of the request for a sealing order. If the declaration is  
8 not filed as required, the court may order that the document be filed in the public record.  
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10       Any document or pleading containing confidential information which is proposed to  
11 be filed with the Court under seal shall be submitted to the court in the manner set forth in  
12 Civil Local Rule 79-5(b) or 79-5(c), as applicable.

13       10.   The terms and limitations of this Protective Order shall not be modified or  
14 deviated from except: (1) upon written stipulation by counsel for the parties, and with  
15 respect to Confidential Discovery Material produced by a non-party pursuant to this  
16 Protective Order, the consent of such producing party; or (2) by order of this Court.  
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18       11.   Upon conclusion of this action, the provisions of this Order shall not  
19 terminate. All Confidential Discovery Material and all copies thereof shall either be  
20 returned within thirty (30) days of the conclusion of this action to the producing party or  
21 non-party, or shall be certified to have been destroyed, at the option of the producing party  
22 or non-party.  
23

24       12.   If a party disagrees with the "Confidential Discovery Material" or "Attorney  
25 Access Only Material" designation, it shall first attempt to resolve the dispute through good  
26 faith negotiation with the designating party or non-party. If the matter cannot be resolved,  
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1 the party may challenge the designation by motion to this Court. The party making the  
2 designation shall have the burden to establish that its confidential designation is supported  
3 by good cause.


4 13. The production of any discovery materials by any party or non-party in this  
5 action, and the use thereof in this action in compliance with the terms of this Protective  
6 Order, shall be and hereby is directed by this Court. Such production and use shall not be  
7 a violation or breach by the producing party or non-party of any agreements between the  
8 producing party or non-party and any other party, non-party, or other entity.

9 14. Review of the confidential documents and information by counsel, experts, or  
10 consultants for the parties in this action shall not waive the confidentiality of the documents  
11 or objections to production. The inadvertent, unintentional, or *in camera* disclosure of  
12 Confidential Discovery Material shall not, under any circumstances, be deemed a waiver, in  
13 whole or in part, of any party's or non-party's claims of confidentiality.

14 15. Nothing contained in this protective order and no action taken pursuant to  
15 it shall prejudice the right of any party to contest the alleged relevancy, admissibility, or  
16 discoverability of the confidential documents sought.

17 16. Nothing in this Protective Order shall preclude any party from applying to  
18 this Court for additional or different protective provisions in respect to specific  
19 documents should the need arise during this action.

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22  
23 Dated: January 27  
24 \_\_\_\_\_, 2006

25  
26  
27  
28  
  
\_\_\_\_\_  
Judge

1 **STIPULATED TO BY THE PARTIES:**

2 By: \_\_\_\_\_

3 Zachary Hammerman, Esq.  
4 Jason L. Ross, Esq.  
5 Andrew R. Margrabe, Esq.  
6 Greensfelder, Hemker & Gale, P.C.  
7 10 South Broadway, Suite 2000  
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**Re:Launch, LLC**

By:  \_\_\_\_\_

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**Attorneys for Defendants**  
**PC Treasures Inc. and Karen**  
**Sweet**

14 DATED: \_\_\_\_\_

15 DATED: 1/26/06

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

RE:LAUNCH, LLC,

Plaintiff,

vs.

PC TREASURES, INC. and KAREN  
SWEET,  
Defendants.

Case No. C-05-0697-PJH

**PROTECTIVE ORDER**

**ACKNOWLEDGEMENT OF PROTECTIVE ORDER  
AND AGREEMENT TO BE BOUND**

The undersigned states as follows:

1. That s/he resides at \_\_\_\_\_  
in the city and county of \_\_\_\_\_  
and state of \_\_\_\_\_;
2. That s/he has read and understands the Protective Order entered in  
the lawsuit styled Re:Launch LLC v. PC Treasures, Inc. and Karen  
Sweet;
3. That s/he
  - (a) is a person noticed for deposition or engaged as a consultant or  
expert, or
  - (b) is otherwise identified in subpart (b) or (c) of Paragraph 5 of  
the Stipulated Protective Order;
4. That s/he agrees to comply with and be bound by the provisions of the  
Stipulated Protective Order;
5. That counsel who has retained or consulted with her/him has explained  
the terms thereof;

